

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

MICHAEL A. BAKER, as Executor
of the Estate of Chantal Burnison,

CASE NO. 2:18-cv-05800-DMG (Ex)

Plaintiff,

VS.

16 DR. IUR. URS WEHINGER, an
17 individual, WEHINGER KAELIN
FERRARI AG, a Switzerland stock
corporation, and DOES 1-20,

Defendants.

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

[Removal from Superior Court of
California, County of Los Angeles,
Case No. BC694437]

1 **1. PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve production of confidential,
 3 proprietary, or private information for which special protection from public
 4 disclosure and from use for any purpose other than prosecuting this litigation
 5 may be warranted. Accordingly, the parties hereby stipulate to and petition
 6 the Court to enter the following Stipulated Protective Order (“Order” or
 7 “Protective Order”). The parties acknowledge that this Order does not confer
 8 blanket protections on all disclosures or responses to discovery and that the
 9 protection it affords from public disclosure and use extends only to the
 10 limited information or items that are entitled to confidential treatment under
 11 the applicable legal principles.

12 **GOOD CAUSE STATEMENT**

13 This action is likely to involve trade secrets, customer and pricing lists
 14 and other valuable research, development, commercial, financial, technical
 15 and/or proprietary information for which special protection from public
 16 disclosure and from use for any purpose other than prosecution of this action
 17 is warranted. Such confidential and proprietary materials and information
 18 consist of, among other things, confidential business or financial
 19 information, information regarding confidential business practices, or other
 20 confidential research, development, or commercial information (including
 21 information implicating privacy rights of third parties), information
 22 otherwise generally unavailable to the public, or which may be privileged or
 23 otherwise protected from disclosure under state or federal statutes, court
 24 rules, case decisions, or common law. Accordingly, to expedite the flow of
 25 information, to facilitate the prompt resolution of disputes over
 26 confidentiality of discovery materials, to adequately protect information the
 27 parties are entitled to keep confidential, to ensure that the parties are
 28 permitted reasonable necessary uses of such material in preparation for and

1 in the conduct of trial, to address their handling at the end of the litigation, and
 2 serve the ends of justice, a protective order for such information is justified in this
 3 Action. It is the intent of the parties that information will not be designated as
 4 confidential for tactical reasons and that nothing be so designated without a good
 5 faith belief that it has been maintained in a confidential, non-public manner, and
 6 there is good cause why it should not be part of the public record of this case.

7 **ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL**

8 The parties further acknowledge, as set forth in Section 12.3, below, that this
 9 Stipulated Protective Order does not entitle them to file confidential information
 10 under seal. Rather, Local Civil Rule 79-5 sets forth the procedures that must be
 11 followed and the standards that will be applied when a party seeks permission from
 12 the court to file material under seal.

13 Any document that is not confidential, privileged, or otherwise protectable
 14 in its entirety will not be filed under seal if the confidential portions can be
 15 redacted reasonably. If documents can be so redacted, then a redacted version for
 16 public viewing, omitting only the confidential, privileged, or otherwise protectable
 17 portions of the document, shall be filed. Any application that seeks to file
 18 documents under seal in their entirety should include an explanation of why
 19 redaction is not feasible.

20 **2. DEFINITIONS**

21 **2.1 Action**: this pending federal lawsuit, case no. 2:18-cv-05800-
 22 DMG(Ex).

23 **2.2 Challenging Party**: a Party or Non-Party that challenges the
 24 designation of information or items under this Order.

25 **2.3 “CONFIDENTIAL” Information or Items**: information (regardless of
 26 how it is generated, stored, or maintained) or tangible things that qualify for
 27 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
 28 the Good Cause Statement.

2.4 Counsel: Outside Counsel of Record (as well as their support staff).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this Action.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to this Action who (1) has been retained by a Party or its Counsel to serve as an expert witness or as a consultant in this Action; (2) is not a past or current employee of a Party; and (3) at the time of retention, is not anticipated to become an employee of a Party.

2.8 Non-Party: any natural person, partnership, corporation, association or other legal entity not named as a Party to this Action.

2.9 Outside Counsel of Record: attorneys who are not employees of a party to this Action but are retained to represent or advise a party to this Action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party, including their support staff.

2.10 Party: any party to this Action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this Action.

1 **2.12 Professional Vendors**: persons or entities that provide litigation
2 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
3 demonstrations, and organizing, storing, or retrieving data in any form or medium)
4 and their employees and subcontractors.

5 **2.13 Protected Material**: any Disclosure or Discovery Material that is
6 designated as “CONFIDENTIAL.”

7 **2.14 Receiving Party**: a Party that receives Disclosure or Discovery
8 Material from a Producing Party.

9 **3. SCOPE**

10 The protections conferred by this Order cover not only Protected Material
11 (as defined above), but also (1) any information copied or extracted from Protected
12 Material; (2) all copies, excerpts, summaries, or compilations of Protected
13 Material; and (3) any testimony, conversations, or presentations by Parties or their
14 Counsel that might reveal Protected Material.

15 However, the protections conferred by this Order do not cover the following
16 information: (a) any information that is in the public domain at the time of
17 disclosure to a Receiving Party or becomes part of the public domain after its
18 disclosure to a Receiving Party as a result of publication not involving a violation
19 of this Order, including becoming part of the public record through trial or
20 otherwise; (b) any information known to the Receiving Party prior to the disclosure
21 or obtained by the Receiving Party after the disclosure from a source who obtained
22 the information lawfully and under no obligation of confidentiality to the
23 Designating Party; and (c) any information that has already been disclosed to the
24 Receiving Party in the course of discovery in this Action, including those
25 previously produced documents designated as “CONFIDENTIAL” prior to
26 Defendants’ production beginning with Bates DEFS_002036. The documents
27 produced in Bates DEFS_002036 - DEFS_003669 and receiving a

1 "CONFIDENTIAL" designation shall be subject to this order, even if it is
 2 entered after said production.

3 Any use of Protected Material at trial shall be governed by a separate
 4 agreement or the orders of the trial judge. This Order does not govern the
 5 use of Protected Material at trial.

6 **4. DURATION**

7 Once a case proceeds to trial, information that was designated as
 8 CONFIDENTIAL or maintained pursuant to this protective Order used or
 9 introduced as an exhibit at trial becomes public and will be presumptively
 10 available to all members of the public, including the press, unless
 11 compelling reasons supported by specific factual findings to proceed
 12 otherwise are made to the trial judge in advance of the trial. *See Kamakana*
 13 *v. City & County of Honolulu*, 447 F.3d 1172, 1180-81 (distinguishing
 14 "good cause" showing for sealing documents produced in discovery from
 15 "compelling reasons" standard when merits-related documents are part of
 16 court record). Accordingly, the terms of this protective Order do not extend
 17 beyond the commencement of the trial for such exhibits so used or
 18 introduced at trial.

19 **5. DESIGNATING PROTECTED MATERIAL**

20 **5.1 Exercise of Restraint and Care in Designating Material for**
 21 **Protection.** Each Party or Non-Party that designates information or items for
 22 protection under this Order must take care to limit any such designation to
 23 specific material that qualifies under the appropriate standards. To the extent
 24 it is practical to do so, the Designating Party must designate for protection
 25 only those parts of material, documents, items, or oral or written
 26 communications that qualify so that other portions of the material,
 27 documents, items, or communications for which protection is not warranted
 28 are not swept unjustifiably within the ambit of this Order.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations
 2 that are shown to be clearly unjustified or that have been made for an improper
 3 purpose (e.g., to unnecessarily encumber the case development process or to
 4 impose unnecessary expenses and burdens on other parties) may expose the
 5 Designating Party to sanctions.

6 If it comes to a Designating Party's attention that information or items that it
 7 designated for protection do not qualify for protection, that Designating Party must
 8 promptly notify all other Parties that it is withdrawing the inapplicable designation.

9 **5.2 Manner and Timing of Designations.** Except as otherwise provided in
 10 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
 11 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
 12 under this Order must be clearly so designated before the material is disclosed or
 13 produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic
 16 documents, but excluding transcripts of depositions or other pretrial or trial
 17 proceedings), that the Producing Party affix at a minimum, the legend
 18 “CONFIDENTIAL” to each page that contains protected material. If only a portion
 19 of the material on a page qualifies for protection, the Producing Party also must
 20 clearly identify the protected portion(s) (e.g., by making appropriate markings in
 21 the margins).

22 A Party or Non-Party that makes original documents available for inspection
 23 need not designate them for protection until after the inspecting Party has indicated
 24 which documents it would like copied and produced. During the inspection and
 25 before the designation, all of the material made available for inspection shall be
 26 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
 27 documents it wants copied and produced, the Producing Party must determine
 28 which documents, or portions thereof, qualify for protection under this Order.

1 Then, before producing the specified documents, the Producing Party must
 2 affix the appropriate legend to each page that contains Protected Material. If
 3 only a portion of the material on a page qualifies for protection, the
 4 Producing Party also must clearly identify the protected portion(s) (e.g., by
 5 making appropriate markings in the margins).

6 (b) for testimony given in depositions or in other pretrial or trial
 7 proceedings that the Designating Party identifies the Disclosure or
 8 Discovery Material on the record, before the close of the deposition, hearing,
 9 or other proceedings all protected testimony and specific the level of
 10 protection being asserted. When it is impractical to identify separately each
 11 portion of testimony that is entitled to protection and it appears that
 12 substantial portions of the testimony may qualify for protection, the
 13 Designating Party may invoke on the record (before the deposition, hearing,
 14 or other proceeding is concluded) a right to have up to 21 days to identify
 15 the specific portions of the testimony as to which protection is sought and to
 16 specify the level of protection being asserted. Only those portions of the
 17 testimony that are appropriately designated for protection within the 21 days
 18 shall be covered by the provisions of this Protective Order.

19 Alternatively, a Designating Party may specify, at the deposition or up
 20 to 21 days afterwards if that period is properly invoked, that the entire
 21 transcript shall be treated as “CONFIDENTIAL.” Parties shall give the other
 22 parties notice if they reasonably expect a deposition, hearing, or other
 23 proceeding to include Protected Material so that the other parties can ensure
 24 that only authorized individuals who have signed the “Acknowledgment and
 25 Agreement to Be Bound” (Exhibit A) are present at those proceedings. The
 26 use of a document as an exhibit at a deposition shall not in any way affect its
 27 designation as “CONFIDENTIAL.”

28

1 Transcripts containing Protected Material shall have an obvious legend on
2 the title page that the transcript contains Protected Material, and the title page shall
3 be followed by a list of all pages (including line numbers as appropriate) that have
4 been designated as Protected Material and the level of protection being asserted by
5 the Designating Party. The Designating Party shall inform the court reporter of
6 these requirements. Any transcript that is prepared before the expiration of a 21-
7 day period for designation shall be treated during that period as if it had been
8 designated “CONFIDENTIAL” in its entirety unless otherwise agreed. After the
9 expiration of that period, the transcript shall be treated only as actually designated.

10 Notwithstanding the foregoing, Dr. Wehinger's deposition shall be ineligible
11 for retroactive designation.

12 (c) for information produced in some form other than documentary and
13 for any other tangible items, that the Producing Party affix in a prominent place on
14 the exterior of the container or containers in which the information is stored the
15 legend "CONFIDENTIAL." If only a portion or portions of the information
16 warrants protection, the Producing Party, to the extent practicable, shall identify
17 the protected portion(s).

18 **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent
19 failure to designate qualified information or items does not, standing alone, waive
20 the Designating Party's right to secure protection under this Order for such
21 material. Upon timely correction of a designation, the Receiving Party must make
22 reasonable efforts to assure that the material is treated in accordance with the
23 provisions of this Order.

24 6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

25 **6.1 Timing of Challenges.** Any Party or Non-Party may challenge a
26 designation of confidentiality at any time that is consistent with the Court’s
27 Scheduling Order. Unless a prompt challenge to a Designating Party’s
28 confidentiality designation is necessary to avoid foreseeable, substantial

1 unfairness, unnecessary economic burdens, or a significant disruption or
 2 delay of the litigation, a Party does not waive its right to challenge a
 3 confidentiality designation by electing not to mount a challenge promptly
 4 after the original designation is disclosed.

5 **6.2 Meet and Confer.** The Challenging Party shall initiate the
 6 dispute resolution process under Local Rule 37-1 et seq.

7 **6.3 Joint Stipulation.** Any challenge submitted to the Court shall be
 8 via a joint stipulation pursuant to Local Rule 37-2.

9 **6.4** The burden of persuasion in any such challenge proceeding
 10 shall be on the Designating Party. Frivolous challenges, and those made for
 11 an improper purpose (e.g., to harass or impose unnecessary expenses and
 12 burdens on other parties) may expose the Challenging Party to sanctions.
 13 Unless the Designating Party has waived or withdrawn the confidentiality
 14 designation, all parties shall continue to afford the material in question the
 15 level of protection to which it is entitled under the Producing Party's
 16 designation until the Court rules on the challenge.

17 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

18 **7.1 Basic Principles.** A Receiving Party may use Protected Material
 19 that is disclosed or produced by another Party or by a Non-Party in
 20 connection with this Action only for prosecuting, defending, or attempting to
 21 settle this Action. Such Protected Material may be disclosed only to the
 22 categories of persons and under the conditions described in this Order. When
 23 the Action has been terminated, a Receiving Party must comply with the
 24 provisions of section 13 below (FINAL DISPOSITION). Protected Material
 25 must be stored and maintained by a Receiving Party at a location and in a
 26 secure manner that ensures that access is limited to the persons authorized
 27 under this Order.

1 **7.2 Disclosure of “CONFIDENTIAL” Information or Items.** Unless
2 otherwise ordered by the court or permitted in writing by the Designating Party, a
3 Receiving Party may disclose any information or item designated
4 “CONFIDENTIAL” only to:

5 (a) the Receiving Party’s Outside Counsel of Record in this action, as
6 well as employees of said Outside Counsel of Record to whom it is reasonably
7 necessary to disclose the information for this Action;

8 (b) the Receiving Party, including the officers, directors, and employees
9 of the Receiving Party to whom disclosure is reasonably necessary for this Action;

10 (c) Experts (as defined in this Order) of the Receiving Party to whom
11 disclosure is reasonably necessary for this Action and who have signed the
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (d) the court and its personnel;

14 (e) court reporters and their staff;

15 (f) professional jury or trial consultants, mock jurors, and Professional
16 Vendors to whom disclosure is reasonably necessary for this Action and who have
17 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (g) the author or recipient of a document containing the information or a
19 custodian or other person who otherwise possessed or knew the information;

20 (h) during their depositions, witnesses, and attorneys for witnesses, in the
21 Action to whom disclosure is reasonably necessary provided: (1) the deposing
22 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)
23 they will not be permitted to keep any confidential information unless they sign the
24 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
25 agreed by the Designating Party or ordered by the court. Pages of transcribed
26 deposition testimony or exhibits to depositions that reveal Protected Material may
27 be separately bound by the court reporter and may not be disclosed to anyone
28 except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

**8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
PRODUCED IN OTHER LITIGATION**

If a Party is served with a subpoena or a court order issued in litigation other than this Action that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

11 (b) promptly notify in writing the party who caused the subpoena
12 or order to issue in the other litigation that some or all of the material
13 covered by the subpoena or order is subject to this Protective Order. Such
14 notification shall include a copy of this Protective Order; and

15 (c) cooperate with respect to all reasonable procedures sought to be
16 pursued by the Designating Party whose Protected Material may be affected.

17 If the Designating Party timely seeks a protective order, the Party
18 served with the subpoena or court order shall not produce any information
19 designated in this Action as “CONFIDENTIAL” before a determination by
20 the court from which the subpoena or order issued, unless the Party has
21 obtained the Designating Party’s written permission. The Designating Party
22 shall bear the burden and expense of seeking protection in that court of its
23 confidential material and nothing in these provisions should be construed as
24 authorizing or encouraging a Receiving Party in this Action to disobey a
25 lawful directive from another court.

**9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
PRODUCED IN THIS LITIGATION**

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

1 If a Receiving Party learns that, by inadvertence or otherwise, it has
 2 disclosed Protected Material to any person or in any circumstance not
 3 authorized under this Protective Order, the Receiving Party must
 4 immediately (a) notify in writing the Designating Party of the unauthorized
 5 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
 6 Protected Material, (c) inform the person or persons to whom unauthorized
 7 disclosures were made of all the terms of this Order, and (d) request such
 8 person or persons to execute the “Acknowledgment and Agreement to Be
 9 Bound” that is attached hereto as Exhibit A.

10 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
 11 **OTHERWISE PROTECTED MATERIAL**

12 When a Producing Party gives notice to Receiving Parties that certain
 13 inadvertently produced material is subject to a claim of privilege or other
 14 protection, the obligations of the Receiving Parties are those set forth in
 15 [Federal Rule of Civil Procedure 26\(b\)\(5\)\(B\)](#).

16 **12. MISCELLANEOUS**

17 **12.1** Right to Further Relief. Nothing in this Order abridges the right
 18 of any person to seek its modification by the court in the future.

19 **12.2** Right to Assert Other Objections. By stipulating to the entry of
 20 this Protective Order, no Party waives any right it otherwise would have to
 21 object to disclosing or producing any information or item on any ground not
 22 addressed in this Protective Order. Similarly, no Party waives any right to
 23 object on any ground to use in evidence of any of the material covered by
 24 this Protective Order.

25 **12.3** Filing Protected Material. Without written permission from the
 26 Designating Party or a court order secured after appropriate notice to all
 27 interested persons, a Party may not file in the public record in this action any
 28 Protected Material. A Party that seeks to file under seal any Protected

1 Material must comply with Local Civil Rule 79-5. Protected Material may only be
 2 filed under seal pursuant to a court order authorizing the sealing of the specific
 3 Protected Material at issue. If a Party's request to file Protected Material under seal
 4 is denied by the court, then the Receiving Party may file the information in the
 5 public record unless otherwise instructed by the court.

6 **13. FINAL DISPOSITION**

7 After the final disposition of this Action, including the exhaustion of all
 8 appeals, and within 60 days of a written request by the Designating Party, each
 9 Receiving Party must return all Protected Material to the Producing Party or
 10 destroy such material. As used in this subdivision, "all Protected Material"
 11 includes all copies, abstracts, compilations, summaries, and any other format
 12 reproducing or capturing any of the Protected Material. Whether the Protected
 13 Material is returned or destroyed, the Receiving Party must submit a written
 14 certification to the Producing Party (and, if not the same person or entity, to the
 15 Designating Party) by the 60 day deadline that (1) identifies (by category, where
 16 appropriate) all the Protected Material that was returned or destroyed and (2)
 17 affirms that the Receiving Party has not retained any copies, abstracts,
 18 compilations, summaries or any other format reproducing or capturing any of the
 19 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
 20 an archival copy of all pleadings, motion papers, trial, deposition, and hearing
 21 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
 22 reports, attorney work product, and consultant and expert work product, even if
 23 such materials contain Protected Material. Any such archival copies that contain or
 24 constitute Protected Material remain subject to this Protective Order as set forth in
 25 Section 4 (DURATION).

26 **14. VIOLATION**

27 Any violation of this Order may be punished by appropriate measures
 28 including, without limitation, contempt proceedings and/or monetary sanctions.

1
2 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.
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5 DATED: 8-12/20

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10 /S/ CHARLES F. EICK
11 HON. CHARLES F. EICK
12 UNITED STATES MAGISTRATE
13 JUDGE
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____

5 [print or type full address], declare under penalty of perjury that I have read in its
6 entirety and understand the Protective Order that was issued by the United States
7 District Court for the Central District of California on [date] in the case of *Spigen*
8 *Korea Co., Ltd. v. Modne, Inc.*, Case No. 2:17-cv-06674-SJO-FFM. I agree to
9 comply with and to be bound by all the terms of this Protective Order and I
10 understand and acknowledge that failure to so comply could expose me to
11 sanctions and punishment in the nature of contempt. I solemnly promise that I will
12 not disclose in any manner any information or item that is subject to this Protective
13 Order to any person or entity except in strict compliance with the provisions of this
14 Order. I further agree to submit to the jurisdiction of the United States District
15 Court for the Central District of California for enforcing the terms of this
16 Protective Order, even if such enforcement proceedings occur after termination of
17 this action.

18 I hereby appoint _____ [print or type full name] of
19 _____ [print or type full address and
20 telephone number] as my California agent for service of process in connection with
21 this action or any proceedings related to enforcement of this Protective Order.

22 | Date:

23 | City and State where sworn and signed:

24

25 Printed name:

27 || Signature: